UNITED NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/25/Add.2
12 December 1994

Original: ENGLISH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic report due in 1994

Addendum

THE NETHERLANDS: ANTILLES*

[16 June 1994]

CONTENTS

		Paragraphs	Page
PART I:	INFORMATION OF A GENERAL NATURE	1 - 32	4
	A. Introduction	1 - 10	4
	B. General legal framework	11 - 16	6
	C. Other treaty commitments	17	7
	D. Incorporation	18 - 19	7
	E. Authorities having jurisdiction and remedies	20 - 26	8
	F. Impeding factors and bottlenecks with regard to the implementation of the Convention . . .	27 - 32	9

* The initial report submitted by the Government of the Netherlands is contained in documents CAT/C/9/Add.1 to 3; for its consideration by the Committee, see documents CAT/C/SR.46, 47, 63 and 64 and Official Records of the General Assembly, forty-fifth and forty-sixth sessions, A/45/44, paras. 435-470 and A/46/46, paras. 154-181. The second periodic report of the Netherlands (metropolitan territory) is contained in document CAT/C/25/Add.1.

GE.94-14996 (E)

CONTENTS (continued)

		Paragraphs	Page
PART II:	INFORMATION RELATING TO THE ARTICLES IN PART I OF THE CONVENTION	33 - 129	11
	Article 1	33 - 34	11
	Article 2	35 - 59	12
	Article 3	60 - 68	18
	Article 4	69 - 71	20
	Article 5	72	20
	Article 6	73 - 75	21
	Article 7	76 - 79	21
	Article 8	80 - 87	22
	Article 9	88 - 91	23
	Article 10	92 - 97	23
	Article 11	98 - 106	25
	Article 12	107 - 109	26
	Article 13	110 - 118	27
	Article 14	119 - 123	28
	Article 15	124 - 127	29
	Article 16	128 - 129	29
PART III:	THE CASES REPORTED TO AMNESTY INTERNATIONAL	130 - 165	30

Annexes*

I. Publication Bulletin No. 5, Act of the Central Government of the Netherlands Antilles of 28 January 1994

II. Civil Actions in 1991. Date of judgement: 17 July 1991. The Court of First Instance of the Netherlands Antilles, place of trial: Curaçao. Judgement in summary process No. KG 209/1991

III. Criminal Actions in 1993. Date of judgement: 25 February 1994. A defended action. The Court of First Instance of the Netherlands Antilles, place of trial: Curaçao. Criminal Judgement in the action of the Prosecuting Authority versus Reonald Bernadina

* These documents are available for consultation in the files of the Centre for Human Rights, as received from the Government of the Netherlands in English.

CONTENTS (continued)

IV. Criminal Actions in 1993. Date of judgement: 9 March 1994. Defended action. The Court of First Instance of the Netherlands Antilles, place of trial: Curaçao. Criminal Judgement in the action of the Prosecuting Authority versus Arthur Ramon Jansen

V. Judgement No. 104. Date of judgement: 7 September 1993. Case number: 1649-93/H.124-93. The Joint Court of Appeals of the Netherlands Antilles and Aruba. Criminal Judgement

VI. Judgement No. 105. Date of judgement: 7 September 1993. Case number: 1647-93/H.125-93. The Joint Court of Appeals of the Netherlands Antilles and Aruba. Criminal Judgement

VII. Judgement No. 106. Date of judgement: 7 September 1993. Case number: 1648-93/H.125-93. The Joint Court of Appeals of the Netherlands Antilles and Aruba. Criminal Judgement

I. INFORMATION OF A GENERAL NATURE

A. Introduction

1. This report is submitted in accordance with article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force with respect to the Kingdom of the Netherlands on 21 January 1989. The present periodic report is submitted in accordance with the general guidelines regarding the form and contents of periodic reports which were provisionally adopted by the Committee against Torture on 30 April 1991. This report will focus on the period from 1 January 1990 to 1 January 1994.

1. Structure of the Kingdom of the Netherlands

2. The present constitutional structure of the Kingdom of the Netherlands dates back to 1954, when, after several years of study, discussion and negotiation, it was decided by the Netherlands, Suriname and the Netherlands Antilles (then including Aruba) to establish a new constitutional order under which they (according to the Charter for the Kingdom, the constitutional document which was promulgated) "will conduct their internal affairs autonomously and in their common interest on a basis of equality and will accord each other reciprocal assistance". Thus the Kingdom, while remaining one sovereign entity under international law, came to consist of three co-equal partners which have distinct identities and are fully autonomous in their internal affairs.

3. Since then, two important changes have taken place. In 1975 Suriname decided - with the full assent of the partners - to leave the Kingdom and become a sovereign State in its own right. In 1986 Aruba became a separate country within the Kingdom, under the Charter, and therefore now has the same constitutional status as the two other countries, the Netherlands and the Netherlands Antilles.

4. The Charter, the highest constitutional instrument of the Kingdom, is a legal document sui generis, which is based upon its voluntary acceptance by the three countries. It falls into three essential parts. The first part defines the association between the three countries, which is federal in nature. The fact that together the three countries form one sovereign entity implies that a number of matters need to be administered by the countries together, through the institutions of the Kingdom (wherever possible, the organs of the countries participate in the conduct of these affairs). These matters are called Kingdom affairs. They are enumerated in the Charter and include the maintenance of independence, defence, foreign relations, the safeguarding of fundamental human rights and freedoms, legal stability and proper administration. The second part deals with the relationship between the countries as autonomous entities. Their partnership implies that the countries respect each other and render one another aid and assistance, materially and otherwise, and that they shall consult and coordinate in matters which are not Kingdom affairs but in which a reasonable degree of coordination is in the interest of the Kingdom as a whole. The third part of the Charter defines the autonomy of the countries, which is the principle underlying the Charter; the countries govern themselves according to their own

wishes, subject only to certain conditions imposed by their being part of the Kingdom. Elementary principles of democratic government, observance of the Charter and Kingdom legislation, and the adequate functioning of the organs of the country are matters of concern to the whole of the realm. Conversely, although Kingdom affairs are matters for the Kingdom as a whole, the countries play active roles in the way they are conducted. In foreign relations, for example, the countries themselves, under the aegis of the Kingdom, deal with matters the substance of which is in their autonomous sphere.

5. The Netherlands Antilles is an autonomous party within the Kingdom of the Netherlands and consists of five islands in the Caribbean, with a population of about 187,687 inhabitants representing more than 40 nationalities of diverse ethnic origins. The Netherlands Antilles have their own Constitution which contains the same basic human rights and freedoms provided by the Constitution of the Netherlands.

6. The judiciary, the executive powers and the legislature are governed by the same principles of the Netherlands Constitution. The majority of the rights and freedoms contained in the different Covenants are protected by the Constitution, while others are covered by separate laws.

7. According to article 43 of the Charter the safeguarding of the fundamental human rights and freedoms, legal security and sound government are Kingdom affairs, but the Netherlands Antilles also has an autonomous responsibility for the realization of these rights and freedoms. Before an amendment affecting basic rights is made to the Constitution of the Netherlands Antilles the opinion of the Government must be obtained. A bill containing such an amendment must be submitted to the Government of the Kingdom for its approval.

8. The independence of the judiciary in the Netherlands Antilles is guaranteed by the Constitution, which provides that the judges and the Attorney-General of the Court of Appeal shall be appointed by the Queen, who pursuant to the Charter, is Head of State of the whole Kingdom. The Supreme Court of the Netherlands has power of cassation in the Netherlands Antilles, and exercises these powers at the request of party(ies) in the Netherlands Antilles.

9. In view of the above-mentioned responsibility of the Kingdom for the safeguarding of the fundamental human rights and freedom, legal security and sound government, article 50 of the Charter provides that the Queen, as Head of the Kingdom, may suspend or annul by decree, stating reasons, any legislation or administrative measure in the Netherlands Antilles which conflicts with, inter alia, the Charter, international law or interests whose safeguarding and promotion is the affair of the Kingdom. Proposals for annulment are made by the Council of Ministers of the Kingdom. However, this step is only taken if redress has not been obtained within the Netherlands Antilles.

10. The Kingdom of the Netherlands signed the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment on 4 February 1984 and deposited the instrument of ratification on 21 December 1988. The Convention became effective for the Kingdom as a whole on 1 January 1989.

Upon ratification the Kingdom of the Netherlands recognized the competence of the Committee against Torture to receive and consider communications from a State party that claims that another State party is not fulfilling its obligations under the Covenant, as well as communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State party of the provisions of the Convention.

B. General legal framework

11. The Constitution of the Netherlands Antilles does not expressly prohibit torture. It does, however, contain provisions relating to the protection from torture and other cruel, inhuman or degrading treatment or punishment included in this Convention.

12. The basic provision relating to protection from torture and other cruel, inhuman or degrading treatment or punishment is to be found in article 3 of the Constitution of the Netherlands Antilles, which provides that "Everyone in the territory of the Netherlands Antilles shall have an equal right to the protection of person (and property)". This right cannot be restricted by laws. As a result of this article aliens in the Netherlands Antilles have the same status as citizens of the Netherlands Antilles with regard to the protection of person (and property).

13. Article 106 reads as follows:

> 1. With the exception of the cases provided for by national decree, it is prohibited to carry out any arrests, except by judicial order, containing the reasons for the arrest.
>
> 2. Such a judicial order must be served upon the party whom it concerns, either at the moment of or immediately following his arrest.
>
> 3. The form of the judicial order and the time-span during which all parties arrested must be heard, is determined by national decree.

14. The term "torture or cruel, inhuman or degrading treatment or punishment" is not employed in the legislation of the Netherlands Antilles.

15. The Criminal Code of the Netherlands Antilles contains provisions relating to various forms of assault (arts. 300-322). By a broad interpretation these articles of the Criminal Code of the Netherlands Antilles could be applicable to many forms of torture.

16. There is also the possibility, however, of not including torture among the criminal offences relating to assault or serious assault, but rather of making it punishable through separate description of it as a criminal offence. Contrary to the standpoint taken in the initial report, the Government of the Netherlands Antilles opts for a separate description of and imposition of punishment for the offence covering torture. The circumstances leading up to this will be specified in the section on article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

C. Other treaty commitments

17. The Netherlands Antilles are a party to the following agreements containing provisions regarding torture:

(a) The International Covenant on Civil and Political Rights and the Optional Protocol thereto (entered into force as of 11 March 1979);

(b) The four Geneva Conventions of 1949 concerning the protection of victims of armed conflict (entered into force as of 3 February 1955);

(c) The two Additional Protocols of 1977 to the Geneva Conventions (entered into force as of 26 December 1987);

(d) The European Convention for the Protection of Human Rights and Fundamental Freedoms (entered into force as of 31 December 1955);

(e) The Sixth Protocol to the European Convention, listed above, relating to the abolition of the death penalty (entered into force as of 1 May 1986);

(f) The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (entered into force as of 20 January 1989);

(g) The Convention on the Prevention and Punishment of the Crime of Genocide (entered into force as of 18 September 1966).

D. Incorporation

18. In the Netherlands Antilles most of the provisions regarding material rights set out in several conventions are, in accordance with article 2, paragraph 2 of the Constitution of the Netherlands Antilles, directly applicable in view of their content and wording and can be applied by the courts in the Netherlands Antilles without any requirement of legislation. Articles 93 and 94 of the Netherlands Constitution, which allow appropriate treaty provisions to have direct legal consequences for the individuals and allow even to prevail over conflicting legislation, also apply to the Netherlands Antilles on the basis of articles 5 and 24 of the Charter for the Kingdom of the Netherlands. Article 93 of the Charter reads: "Provisions of treaties and of resolutions by international institutions which may be binding on all persons by virtue of their contents shall become binding after they have been published". Article 94 reads: "The valid legal stipulations within the Kingdom are not applicable if these are not compatible with any and all the binding stipulations of conventions and decrees of international organizations".

19. However, treaty provisions which stipulate that certain acts must be regarded as criminal offences and require that offenders must be prosecuted under the national criminal law are not directly applicable. In the first place, article 1 of the Criminal Code states that an act can only be deemed to be an offence on the basis of a previously established statutory provision in the criminal law. This means that definitions of offences contained in

international agreements have to be incorporated into the criminal law of the Netherlands Antilles. In the second place, incorporation into the criminal law of the Netherlands Antilles also serves to determine the maximum penalty which may be imposed for the offence.

E. Authorities having jurisdiction and remedies

20. Certain fundamental rights may only be restricted by law passed by the Government (the Governor and Council of Ministers) and the Parliament of the Netherlands Antilles. This means that the administration of each of the five island territories of the Netherlands Antilles is not empowered to impose such restrictions.

21. As an organ of the Government of the Netherlands Antilles, the Governor may annul any regulation by an island territory administration which restricts the individual in the exercise of his basic rights. If the Governor does not annul such a regulation, any individual may institute legal proceedings, whereupon the court may declare the regulation inoperative because it conflicts with an overriding provision (for example, of a Covenant, the Constitution, or a law or Governor's decree).

22. As a representative of the Kingdom of the Netherlands, the Governor may propose that the Queen as Head of State of the Kingdom, suspends or annuls any administrative measure enacted by the Government of the Netherlands Antilles which contains provisions violating human rights and freedoms. Thus, if in his opinion an administrative measure is in violation of an overriding provision and should be suspended or annulled, he will not enact it.

23. The courts in the Netherlands Antilles may scrutinize any Government conduct and even legislation in order to ensure that it is in accordance with the Covenant. Recourse to the courts in the Netherlands Antilles in connection with human rights matters is guaranteed by the Constitution and by the laws and statutory instruments enacted thereto. Thus, even if the Governor does not propose that the Queen suspend or annul an administrative measure enacted by the Government of the Netherlands Antilles, the court may declare the measure inoperative at the request of any person whom the measure unlawfully restricts in the exercise of his or her basic rights.

24. The Governor may propose that the Queen suspends or annuls laws which contain provisions violating the provisions of the Covenant, in the same way as for administrative measures. Any legislation of the Netherlands Antilles which contains such provisions can also be examined by the courts in the light of the Covenant and declared inoperative.

25. Under the law of the Netherlands Antilles, the power to institute criminal proceedings lies solely with the Public Prosecution Department. The individual citizen is not entitled to institute such proceedings, although he or she may lodge a complaint with the court, accompanied by a request that it institute proceedings.

26. The criminal procedure of the Netherlands Antilles is governed by what is known as the expediency principle, which means that the Public Prosecution Department may decide not to prosecute in a particular case for reasons of

public interest. However, under article 26 of the Code of Criminal Procedure, any interested party may lodge a complaint with the Court against such a decision. The Court then hears the reasons not to prosecute and decides completely independently in giving the Prosecution Department an order to prosecute.

F. Impeding factors and bottlenecks with regard to the implementation of the Convention

1. The delay in the Parliamentary handling of the New Penal Code

27. By national decree of 8 July 1985 a committee was set up with a view to revising the Penal Code of the Netherlands Antilles. It was the task of the committee to advise the Government as to the modifications and the innovations to be introduced into both codes for the purposes of modernizing and improving them and of adapting them to the commitments made under the Convention and the social situation desired.

28. In 1986 Aruba obtained the status of an autonomous country within the Kingdom. With this Aruba also acquired her own Parliament.

29. The Committee in Charge of the Revision of Criminal Law was granted the status of a committee set up by both countries (Aruba and the Netherlands Antilles). The Aruban Parliament was granted the opportunity to get acquainted with the bill for revision of the Criminal Code by means of workshops organized by the Committee. Since the Cooperation Arrangement between the Netherlands Antilles and Aruba (Publication Sheet 1985, 88) stipulates that the Criminal Code of both countries must be settled concordantly and that the law of criminal procedure must be uniform, the committee was assigned the task of advising both Governments.

29. At the time of submission of the bill to the Parliaments of both countries during the year of session 1987-1988 the Committee was composed as follows:

Chairman: R.F. Pietersz LL.M., Attorney-General of the Netherlands Antilles;

Members: H.W. Braam Jr., Attorney (substitute member), Netherlands Antilles;
J. Hellmund LL.M., Attorney, Netherlands Antilles;
H.Th. Lopez, Representative of the Order of Attorneys of Aruba;
Mrs. H.M. Nassy LL.M., Directress Legislation, Aruba;
Mrs. E.E. Palm-Meyer LL.M., Central Bureau for Judicial and General Affairs, Netherlands Antilles;
H.L. Peloz LL.M., Criminal Law Lecturer at the University of the Netherlands Antilles,
D.A. Piar LL.M., Chief Public Prosecutor, Netherlands Antilles;
F. Wernet LL.M., Attorney-General of Aruba;
J.Th. Wit LL.M., Member of the Court of Justice of the Netherlands Antilles and Aruba;

Member-secretary: T.M. Schalken, Member of the Joint Court of Justice, at present Professor of Criminal Law and Law of Criminal Procedure at the Vrije Universiteit of Amsterdam;

Assistant-secretary: Mrs. H.M. Gorsira-van den Adel LL.M.

30. In 1988 the Committee submitted a bill to Parliament. It was the intention to initiate revision of the Criminal Code following parliamentary approval of the Revised Code of Criminal Procedure. Since Parliamentary handling of the Revised Code of Criminal Procedure will probably be most time consuming, due to the complexity of the subject-matter and the lengthy procedure for attaining a Uniform Federal Decree, it is unlikely that the Committee will be able to make a start on the revision of the Criminal Code in the near future. This has consequences for the penalization of the criminal offence of torture, which as specified in the initial report, should have been effected in the Criminal Code. As a result of the enormous delay in the handling of the Revised Code of Criminal Procedure it no longer appears attainable in the immediate future to penalize the criminal offence of torture by means of the Revised Criminal Code. A decision will be made in favour of a separate penalization of the criminal offence of torture in connection with the implementation of article 1 of the Convention, as an expedient to resolve this bottleneck.

2. The lack of a department of justice for coordinating the implementation of the Convention.

31. Almost all the government instances involved in the implementation of this Convention fall under the jurisdiction of the Minister of Justice of the Netherlands Antilles. The Minister of Justice, however, has, up until now, not had a department which could function as a coordinating entity with regard to the implementation of the Convention. After a two-year period of preparation the new Department of Justice will become operational shortly and will be able to contribute to a more specific implementation of this Convention.

3. Lack of funds for the organization of courses

32. Owing to financial constraints, corrective intervention on a structured basis is lacking with regard to training and courses for executive government personnel which is geared to the norms that can be deduced from this Convention. Article 10 is referred to as a solution to this bottleneck.

II. INFORMATION RELATING TO THE ARTICLES IN PART I OF THE CONVENTION

Article 1

33. The Netherlands Antillean Law does not expressly prohibit torture. It does, however, contain provisions which make acts prohibited under the Convention punishable as offences. There is no doubt that acts which come under the description of the term "torture" in article 1 of the Convention are already offences under existing Netherlands Antillean legislation, more specifically under the provisions of the Criminal Code referring to assault occasioning bodily harm and serious assault (arts. 313-319). New circumstances, however, have compelled the independent penalization of torture. The decision to draft a separate act has been taken for the following reasons:

(a) The penalization of the criminal offence of torture should have been effected by means of the Revised Criminal Code and the Code of Criminal Procedure. As a result of the enormous delay in the parliamentary handling of the Revised Code of Criminal Procedure it is no longer immediately possible to penalize torture by means of the Revised Criminal Code;

(b) Article 39 of the Charter stipulates that the criminal law must be arranged on a concordant basis within the Kingdom. The Netherlands have already introduced the independent penalization of torture. Considering the aforementioned, the Netherlands Antilles will also opt for this course;

(c) Torture may take forms which cause extreme pain or mental anguish without leaving any trace of physical or mental injury. For this reason, the use of the specific term "serious assault" would be inadequate for the implementation of the Convention. Therefore, executive legislation will be required for the implementation of article 1 of the Convention.

34. The Convention also requires that a number of special provisions be established governing cases in which assault qualifies as torture. These are:

(a) The establishment of universal jurisdiction;

(b) That no grounds for immunity from criminal liability based on the fact that an official order or a statutory provision is involved may be allowed;

(c) That the offence be classified as one for which extradition may be requested and that extradition requests be allowed from other parties to the Convention in respect of this offence, even where no extradition treaty has been concluded with such parties;

(d) The provision of legal assistance in cases involving this offence, including cases in which national legislation requires that such assistance be given on the basis of an international agreement and where no agreement governing legal assistance has been concluded with the other parties to the Convention.

These special provisions will be established in the separate Act. At present, a bill concerning the implementation of the Convention against Torture is in its preparatory phase.

Article 2

A. The police

35. In 1991 the Government of the Netherlands Antilles undertook the first steps to examine one form of torture or inhuman treatment or punishment, namely inadmissible application of force on the part of the police. A committee consisting of, among others, a representative of the Curaçao Bar Association and a representative of the Human Rights Committee of the Netherlands Antilles, was instructed by the Minister of Justice to conduct an investigation as to alleged illegal conduct on the part of the police. The committee was also instructed to conduct an investigation with regard to the functioning of the complaints committee, set up by national decree of 12 November 1985. The committee was headed by the former Governor of the Netherlands Antilles, Dr. R. Römer, a Professor in Sociology at the University of the Netherlands Antilles.

36. The committee had the investigation of citizens' experiences of police brutality carried out by the Scientific Research and Documentation Centre of the Justice Department in The Hague. In its report the committee indicated that the results cover the period from 1 January 1990 to 31 March 1992. The fact that Amnesty International also examined allegations of police brutality in the Netherlands Antilles over this very same period was of the utmost importance (Römer Committee report, p. 46).

37. The most important results of the investigation, in which a substantial random group of 2,248 respondents were interviewed about their possible experiences as victims of police brutality, paint the following picture. Of those interviewed 2.5 per cent (57 persons) declared that they had been ill-treated by the police. Between 1 January 1990 and 31 March 1992 1 per cent (29 persons) had personally experienced police brutality. Of those cases of police brutality the majority can be classified as force applied on the street; in the other cases force was applied in the home, at the police station or somewhere else.

38. The committee drew the conclusion that there was no structural ill-treatment of the citizen on the part of the police. In the case of force applied on the street a clear pattern could be observed (Römer Committee report, pp. 49-54):

(i) The police officers involved did not always seem to be in a position to cope adequately with potential situations of conflict between citizens;

(ii) With regard to the arrest of suspects, force was often applied in reaction to the opposition of the suspect.

39. Also, according to the committee, there was no structural pattern of force on the part of the police at the time of the interrogation. However, a

few incidents can be derived from the results of the investigation (Römer Committee report, p. 48). In its final analysis, the Committee pointed out that even though there was no structural police brutality, the results of the investigation project an incongruous image.

40. On the basis of the results of the investigation the committee made the following recommendations:

(i) The foundation of a department of justice and a police board;

(ii) The appointment of a complaints committee;

(iii) The stepping up of the internal supervision of the police force by the Public Prosecution Office;

(iv) The appointment of a national criminal investigation department to trace criminal acts committed by police officers;

(v) The optimization of police training, in-service training and continuing education, and the introduction of a course on human rights and social skills.

The recommendations made by the committee in large part correspond with the measures already taken by the Government of the Netherlands Antilles with regard to the implementation of the Convention against Torture.

41. In relation to inadmissible force on the part of the police, the following legal measures have either been taken or are in preparation:

(a) In the National Decree governing the Complaints Committee as to Police Conduct, which recently entered into force (Publication Sheet 1994, 5), the committee was granted authorization to conduct investigations independently. The committee consists of one physician, one law lecturer of the University of the Netherlands Antilles, and a former public prosecutor (Appendix I);

(b) A bill is in preparation regarding the setting up of a national criminal investigation department which, falling directly under the jurisdiction of the Attorney-General, will operate as an independent investigation apparatus with regard to criminal cases against civil servants and authorities, among others the police;

(c) At present a bill concerning the implementation of the Convention against Torture is in preparation;

(d) A legal measure for prevention of inhuman treatment or punishment has recently been concluded in the Bill on Administrative Procedure, which creates the possibility of bringing in an independent judge in the case of mistakes at the administrative level, also on the part of civil servants;

(e) A bill is in preparation concerning the appointment of an independent Ombudsman to whom complaints could also be submitted in cases of malfunctioning of the Complaints Committee, the National Criminal Investigation Department and the Judicial Power.

42. As a means of preventing torture, the following measures have been taken at the managerial and policy levels:

(a) In 1993 the Department of Justice was officially established. This Department will soon have a police board at its disposal which will advise the Minister of Justice as to police policy and management.

(b) To optimize supervision on the part of the Public Prosecution Office, a public prosecutor at the Office has been appointed as coordinator for complaints with regard to inadmissible force applied by the police. The operating procedure is as follows. A complaint is submitted by the victim or the examining magistrate. The examining magistrate makes mention of the complaint in the report of the interrogation and forwards the report to the Public Prosecutor. The Public Prosecutor in turn requests the police force to conduct an investigation into the alleged inadmissible application of force by members of the police force. Owing to the fact that an investigation of such a nature is somewhat delicate and because it also takes a long time to achieve the necessary results, a pilot project was set up on the island of St. Maarten, in which the Public Prosecutor himself conducts the investigation, and thus effects the interrogation. However, the large majority of cases regarding police brutality are dismissed owing to lack of proof. At present a bill is being prepared for the establishment of a national criminal investigation department to optimize the quality and pace of investigation. This independent service, completely isolated from the police force at the organizational level, will serve as an investigation apparatus in criminal cases against civil servants, such as police officers and prison personnel. The registration of legitimate complaints and those that have been dismissed is effected at the Public Prosecution Office and divided according to the various departments of the police force.

43. As a means of monitoring the process, the Public Prosecutor immediately contacts the chief of the department concerned in the event of an unacceptable amount of legitimate and dismissed complaints regarding that department. The result of this monitoring process is that the investigations into police brutality are completed at a faster pace and the complaints filed per department will decrease in number.

B. The House of Detention

44. As a means of preventing torture and other forms of inhuman treatment or punishment certain steps have been taken with respect to the House of Detention/Prison.

45. In 1991 a study group was appointed by Ministerial Decree of 24 June 1991 of the Minister of Justice with the task of presenting recommendations for the optimization of the treatment of detainees in the House of Detention and to bring the issuing of instructions within the institution into conformity with the conventions which are in force for the Netherlands Antilles. A draft report has already been completed. The final recommendations will be

presented shortly to the Minister of Justice. The draft report contains certain recommendations relevant for the Convention:

(i) Humanization of disciplinary punishments

Even though the punishments consisting of handcuffed confinement and the provision of bread and water have no longer been inflicted for decades, it was recommended to delete them from the Domestic Code of the House of Detention (art. 60). Confinement to the punishment cell or solitary confinement must be reduced from four weeks to two weeks. Also, natural light must be allowed to enter into the cell. The detainee must also be allowed the right to file a complaint with regard to the disciplinary punishments inflicted on him/her.

(ii) Training, in-period training and continuing education

The present training for personnel is unsatisfactory. Up to the present, training has been based on the philosophy of security. Little attention has been paid to the aspect of guidance/supervision of detainees during the training of prison officials. The new Training Plan for Penitentiary Institutions of the Netherlands Antilles, concluded in December of 1992, must enter into effect as soon as possible. However, it can only take place with the simultaneous implementation of the reorganization plans, within the framework of which a training programme geared to the Convention against Torture will be given ample attention.

(iii) The Supervisory Committees and implementation of the right to file a complaint

Pursuant to the present legislation, the Netherlands Antilles acknowledges three Supervisory Committees, namely in Curaçao, in Bonaire, and on St. Maarten. They are presided by a member of the Joint Court of Justice. The supervisory task of the committees has been extended over the past years. The performance of the Supervisory Committees must be upgraded. This shall be effected by means of the qualitative and quantitative reinforcement of the Supervisory Committees. The terms of reference of the Committees must be extended by a procedure for the settlement of complaints.

46. These recommendations, which are relevant to the Convention, are expected to enter into force at the time of the aforementioned reorganization of the Netherlands Antilles Houses of Detention.

47. In the meantime, as a means of preventing torture, the following measures have been taken at the managerial and policy levels:

(i) Instructions on the application of force

The Prison Management has issued instructions on the application of force, which make obligatory the drawing up of a report on all incidents in which force in any form whatsoever is applied by the prison guards.

(ii) Optimization of supervision on the part of the Public Prosecution Office

As a means of stepping up supervision by the Public Prosecution Office, the Public Prosecutor acts as the contact person for the House of Detention, as well as the coordinator for complaints concerning inadmissible application of force by prison guards. The operating procedure to this effect is as follows. The Public Prosecutor is informed of the complaints by means of uncensored correspondence with the prisoner, or verbally via, among others, fellow detainees, who are aware of any cases of application of force. The Public Prosecutor subsequently sends these complaints on to the prison management for investigation. As a rule, the prison management is usually aware of the incident as a result of internal reporting. Each incident is investigated. The Public Prosecutor also assesses the situation in the House of Detention and then talks with the prison management, by means of which it is decided whether the case will be settled at a disciplinary or a criminal level. In the event of criminal pursuit, the Public Prosecutor calls in the assistance of the police for the criminal investigation. In such instances also the National Criminal Investigation Police play an important role.

Reorganization of the House of Detention

48. It should be stated that the House of Detention is overcrowded. The present space and provisions can be considered inadequate. The regime does not meet modern standards, by which much emphasis is placed on supervisory guidance. Consequently, the Government decided to reorganize the House of Detention and to provide better training and supervisory courses for all personnel. An interim manager has been called in from the Netherlands, who will help pave the way for the reorganization process.

Improvement of the prison system

49. The Government of the Netherlands Antilles also gives high priority to the improvement of the prison system. Subsequently, plans were drawn up to create a forensic observation and guidance section for the Convict Prison and the House of Detention (abbreviated as FOBA), on the island of Curaçao.

50. FOBA has been instituted and is a type of "intensive care" section of the Convict Prison and the House of Detention, for the benefit of any prisoner whose behaviour is found to be characterized by such maladjustment as to occasion serious problems in the Convict Prison and the House of Detention. The only criterion for hospitalization in FOBA is the existence of a crisis, either if the prisoner himself experiences a crisis (be it acute psychosis, depression, suicidal inclinations), or when a disturbance is caused by obstreperous conduct. The section is divided into two wards: the observation and the guidance unit. FOBA is a project of joint cooperation between the prison and the Psychiatric Clinic of the Netherlands Antilles. Expertise is made available to FOBA by the Clinic.

51. In cooperation with the prison doctors and the pathologist of the national Laboratory a protocol is being developed to conduct the required investigation in a responsible manner and to coordinate relevant activities between the Public Prosecution Office and the prison doctors, in the event of police brutality or ill-treatment on the part of prison guards.

52. As a means of preventing inadmissible application of force in the House of Detention, the National Decree Bill on Principles for the Prison System in the Netherlands Antilles has been submitted to Parliament. This forms a basis for the drafting of a prison decree, as a means of elaborating the aforementioned national decree. Through this new legislation the possibility is created to have the Supervisory Committee act as a complaints committee. Parliamentary handling of this legislation project, which serves as modernization of the penitentiary right, has not yet been completed.

53. A bill is in preparation regarding the establishment of a national criminal investigation department, which would act as an investigation entity in matters which concern criminal cases against, among others, prison guards.

Judicial verdicts

54. There is a judicial verdict relating to inhuman punishment in the House of Detention, namely the C.S. Rietwijk case. In July 1991, a number of detainees demanded the abolition of solitary confinement in the punishment cell ("cachot") by instituting summary proceedings to this effect (KG 209/1991). Even though the demand was rejected, the court of first instance established that solitary confinement might not be inflicted for a longer period than two weeks and that the cell in question must have sunlight/daylight. Ever since, that requirement has been complied with. It may be assumed that solitary confinement in the punishment cell meets the judicial norms of the Convention since the verdict was pronounced in the C.S. Rietwijk case (Appendix II).

55. The fact that the physician associated with the institution is only present in the House of Detention from 2 to 5 p.m. two afternoons per week was considered insufficient by the judge, who considered that medical treatment did not meet reasonable requirements of meticulousness. The Government of the Netherlands Antilles was assigned to see to it that there is at least a 15-hour medical consultancy period throughout the week in the institution concerned. The Government complied with the aforementioned by assigning a second physician. At present the demand of the Court is being amply met.

Article 2.2

56. The following international conventions which are specifically related to time of war and political instability are in force for the Netherlands Antilles:

The Geneva Convention regarding the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (12 August 1949);

The Geneva Convention for the Amelioration of the Condition of Wounded Sick and Shipwrecked Members of Armed Forces at Sea (12 August 1949);

The Geneva Convention relative to the Treatment of Prisoners of War (12 August 1949);

The Geneva Convention relative to the Protection of Civilian Persons in Time of War (12 August 1949);

Protocols I and II Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Bern, 12 December 1977);

Convention on the Prevention and Punishment of the Crime of Genocide (Paris, 9 December 1948).

57. By means of the aforementioned Conventions the Netherlands Antilles have committed themselves to observe and respect the laws and norms of war and to render violation of such punishable. The executory legislation to this effect is the Decree of 16 June 1954 with regard to the handing over to the corresponding authorities of those who allegedly committed war crimes which concern the Netherlands Antilles. The Conventions can also be executed by means of the Genocide National Executory Decree, dated 2 February 1993 and by means of the Criminal Code (vol. 2, Titles 1 and 11).

58. The bill for the implementation of the Convention against Torture will specify that war and political instability are not exceptional circumstances for the application of torture.

Article 2.3

59. As specified in the general section of this report and in the section on article 1, the Netherlands Antilles has opted for independent penalization of the criminal offence of torture. A bill on the implementation of the Convention is in preparation in which it will be specified that an order from a superior officer or a public authority (art. 45 of the Criminal Code), or a statutory provision (art. 44 of the Criminal Code) are not applicable as grounds for immunity from criminal liability in the case of the criminal offence of torture.

Article 3

60. In accordance with article 5 of the Constitution of the Netherlands Antilles, rules on the admission, residence and expulsion of Dutch citizens and aliens must be established by law. Restrictions on freedom in these respects can therefore only be imposed by law. The full text of the rules concerning admission, residence and expulsion is contained in the Admission and Expulsion Act.

61. The authority who, in the framework of the Federal Decree on Admission and Expulsion, decides on deportation, expulsion, and possible return of foreigners, is the Lieutenant-Governor.

62. Aliens applying for admission to the Netherlands Antilles in principle await the decision at first instance on their case in their own country. If their application is dismissed, they may request a review. When the

Government has decided to expel an alien, he/she may lodge an appeal before the civil courts on the grounds of a potential tort on the part of the local authorities. In these cases, aliens may await the result of this procedure in the Netherlands Antilles. Aliens who have previously obtained a residence permit, of which the validity however is expired, may have recourse to the legal remedies described above. In all these cases the review of the decision may be awaited in the Netherlands Antilles.

63. Deportation has an inexorable character. In the event of deportation there is only one means of coercion, namely the detention of aliens. Expulsion and deportation are always to be effected to the country of choice. It is only in the event that the travel documents of the alien concerned are not in order that he/she is returned to his/her country of origin. Contacts with the highest judicial authorities in the region are such that insight can be gained as to whether or not there is danger of torture in the event of return. There have been no cases of deportation, expulsion or return which are in contravention of article 3 of this Convention.

Extradition

64. Extradition of aliens in accordance with article 4 of the Constitution of the Netherlands Antilles is only possible pursuant to a treaty. The Extradition Act of the Netherlands Antilles contains rules concerning the incorporation of extradition treaties. According to the text of both the Constitution of the Netherlands Antilles and aforementioned Act only aliens can be extradited, and this only pursuant to a treaty. On the other hand, extradition cannot take place in the case of political crimes or in other circumstances related to political crimes.

65. The Court of Justice decides on the admissibility of a request for extradition, and appeal for cassation can be made to the Supreme Court. Once a request has been declared admissible, the Governor of the Netherlands Antilles decides whether it is appropriate to grant the request, bearing in mind the various international agreements which may be applicable.

66. Extradition will not be allowed in cases where, in the opinion of the Governor, there are grounds for suspecting that if the person concerned is extradited he/she will be persecuted, punished or will suffer in some other way on account of his/her religious or political convictions, nationality, race or the social group to which he/she belongs.

67. An appeal may be lodged before the civil court against an extradition order issued by the Governor. Extradition does not usually take place until the application has been decided upon.

68. The competent authorities have not received any special training in order to establish whether the alien returned to his/her country of origin is subject to torture. The contacts in the region are such that insight can be gained as to whether or not there is danger of torture in the country of origin. For this reason the aforementioned special training is considered unnecessary.

Article 4

69. As mentioned earlier, acts of torture as described in the Convention can be dealt with in the Criminal Code of the Netherlands Antilles. The provisions particularly relating to torture within the meaning of article 1 of the Convention are: articles 248 and 249 (concerning sexual abuse); articles 287 to 299 (concerning crimes against a person's liberty, slavery, kidnapping, assault and battery and unlawful threat, the infliction of bodily injury or causing death). Such offences are punishable with penalties of up to life imprisonment or temporary imprisonment of 20 years, depending on the gravity of their nature.

70. However, defining torture as a form of "serious" assault within the specific meaning of article 315 of the Criminal Code would in a certain sense not do justice to the purport of the provisions of the Convention. In order to satisfy its obligations under the Convention, the Netherlands Antilles will formulate a separate offence of "torture" and incorporate it in a separate Act which provides for exceptions to generally valid principles of criminal law in respect of this offence, for instance excluding the offence of torture from the application of articles 44 and 45 (which grant immunity from criminal liability where acts are carried out on official orders or according to statutory provisions).

71. The fact that the attempt to commit a criminal offence and acts constituting complicity or participation in offences are also criminal offences derives from articles 47, 49 and 50 of the Criminal Code. Article 47 states that an attempt to commit an offence is itself an offence if the intention has been revealed by the offender's starting to carry it out and if completion of the act was prevented purely by circumstances independent of the offender's will. Article 49 states that those who commit a particular offence, cause it to be committed, participate in the offence or instigate its commission, will be deemed to be guilty of the offence and punished accordingly. Article 50 states that those who intentionally aid in the commission of a criminal offence or intentionally provide the opportunity, means or information which aids the commission of the offence, will be deemed to be guilty of complicity and punished accordingly.

Article 5

72. The following articles of the Criminal Code of the Netherlands Antilles are relevant to the subject of criminal jurisdiction as referred to in Article 5 of the Convention:

> "Article 2
>
> Netherlands Antillean criminal law shall be applicable to any person who commits a criminal offence in the Netherlands.
>
> "Article 3
>
> Netherlands Antillean criminal law shall be applicable to any person who commits a criminal offence outside the Netherlands on board of a Netherlands Antillean ship or aircraft.

"Article 5, paragraph 1 (2)

Netherlands Antillean criminal law shall be applicable to any Netherlands Antillean resident who perpetrates an act outside the Netherlands Antilles deemed under Netherlands Antillean criminal law to be an indictable offence and which also constitutes a criminal offence in the country in which it is committed.

The establishment of universal jurisdiction should have been actualized by means of the Criminal Code and the Code of Criminal Procedure. Due to the enormous delay in the parliamentary handling of the Revised Code of Criminal Procedure, this is no longer attainable on a short term basis."

In order to implement the second paragraph of article 5, universal jurisdiction will be established over the criminal offence of torture in a separate Act implementing the Convention on Torture.

Article 6

73. The rules of the Code of Criminal Procedure of the Netherlands Antilles are applicable to offences falling within the jurisdiction of the Courts of the Netherlands Antilles. By a court's decision a suspect can be detained or other actions can be taken to ensure his/her presence, providing the normal conditions applying to such measures are fulfilled. According to the Extradition Act of the Netherlands Antilles (Nederlands-Antilliaanse Uitleveringsbesluit P.B. 1926, No. 61) these measures may also be taken in connection with extradition, even before a petition for extradition has been submitted.

74. Pursuant to article 71 of the Code of Criminal Procedure, a preliminary investigation shall take place as soon as there is cause to believe that an offence falling in the domain of public prosecution has been committed.

75. In the case of an offence with respect to which extradition may take place, the Attorney-General shall, pursuant to the 1926 Extradition Act of the Netherlands Antilles undertake the necessary investigation following submission of a petition of extradition. At an earlier stage of the extradition process, when another State has requested coercive measures with respect to a suspect, a preliminary investigation of the facts is made following a Court order to that effect. Since 16 January 1986 the Vienna Convention on Consular Relations is in force for the Netherlands Antilles. In accordance with this Convention the competent authorities of a State party shall inform the relevant consular post if a national of another State is detained, if this is requested. In the Netherlands Antilles this information is submitted automatically after the detention of a foreigner. A consular employee has unconditional access to a fellow national who is detained.

Article 7

76. The Criminal Code and the Code of Criminal Procedure contain provisions allowing the authorities of the Netherlands Antilles to take measures to prosecute in cases of criminal offences which fall within the jurisdiction of the Courts in the Netherlands Antilles. Cases referred to in paragraph 1 of

article 7 shall therefore be submitted to these authorities for the purpose of prosecution, if the persons concerned are not being extradited to the requesting State party.

77. Following the implementation of article 5 of this Convention, namely universal jurisdiction, it becomes imperative that the accused be handed over to the corresponding local authorities, in the event of non-extradition to a State party.

78. Pursuant to paragraph 2 of article 7, the competent authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature. The law and practice of the Netherlands Antilles are in conformity with this provision. A person against whom proceedings are taken in the case of an offence as referred to in article 4 is treated in the same way as other offenders and will consequently be guaranteed fair treatment by the general provisions on legal proceedings in criminal cases.

79. There are no special rules of procedure laid down with regard to the furnishing of evidence or the position of the suspect.

Article 8

80. This article concerns obligations relating to extradition for the offences referred to in the Convention.

81. Extradition, as mentioned earlier, is regulated by the Extradition Act of the Netherlands Antilles and is only possible pursuant to a treaty.

82. The Netherlands Antilles is bound by a number of bilateral treaties, which apply to the so-called "enumeration system", whereby offences for which extradition may be requested are listed by name.

83. The Netherlands Antilles is party to the various Conventions concerning extradition of aliens, inter alia the Convention on Extradition of Criminals between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands and the Convention on extradition between the United States of America and the Kingdom of the Netherlands.

84. Article 2 of the Extradition Act specifies certain conditions for offences with respect to which extradition is requested: they must be punishable under the law of the Netherlands Antilles by more than one year's imprisonment; if a person has been convicted, the penalty must not be less than four month's imprisonment. If extradition is requested for several offences, it is sufficient if one of the offences satisfies these requirements. Torture normally comes under those offences whose scales of penalties, as laid down in the Criminal Code, are sufficient to satisfy the requirements of the Netherlands-Antillean Extradition Act and which are thus extraditable under Netherlands Antillean Laws. According to the Extradition Act, extradition can be refused if an offence has a political nature. Pursuant to the different Conventions to which the Netherlands Antilles is bound, the right is reserved to refuse extradition if the offender risks

persecution which is directed against his life or health, or on humanitarian grounds. Such impediments are considered by both the Court of Justice and the Government of the Netherlands Antilles.

85. The Convention compels the State parties to the Convention to extradite on the basis of article 8, paragraph 2, in the event that there is no extradition convention between the parties. As a means of implementing article 8, paragraph 2, the executive legislation provides that, on the basis of article 8, extradition can take place between States which are parties to the Convention against Torture.

86. The legal fiction contained in the first sentence of article 8, paragraph 1, is directly applicable in connection with the countries with which the Netherlands Antilles has concluded a treaty, provided that they are also party to the Convention.

87. Paragraph 4 of article 8 has no significance for Netherlands Antillean law. The Netherlands Antillean Extradition Act contains no provisions limiting the possibility of extradition in connection with the place where the offence for which extradition is being requested was committed.

Article 9

88. The Netherlands Antilles grants a great deal of assistance, in connection with criminal proceedings, to other States. In general, assistance can be given to a foreign State irrespective of whether an agreement on judicial assistance has been concluded with that State or not.

89. In cases where the granting of a request would involve the use of coercive measures, the request may only be granted if it is based on a treaty. Such a basis is provided in this context by article 9 of the Convention.

90. The Netherlands Antilles is bound to the various conventions on mutual judicial assistance in criminal matters, inter alia, the Convention between Belgium, Luxembourg and the Kingdom of the Netherlands concerning extradition of criminals and the Convention between the United States of America and the Kingdom of the Netherlands on mutual assistance in criminal matters.

91. In the bill concerning the total revision of the Code of Criminal Procedure, which has been submitted to the Parliament of the Netherlands Antilles for approval, a new part concerning international judicial assistance has been incorporated. In this part the grounds for refusal of a request for judicial assistance are established and a special regulation concerning hearing by foreign police officers is inserted.

Article 10

92. During the training of police and prison officers, particular attention is paid to the humane treatment of suspects and detainees. Much time is devoted to acquainting such personnel with the laws and regulations governing their work.

93. During the training of police and prison officers, and forensic instructors in the prison (FOBA), particular attention is paid to the legal position and the treatment of suspects and detainees. By means of the exact sciences particular attention is paid to the instructions on the use of force, the admissible and inadmissible application of force. Despite the aforementioned it can be concluded that the present training is insufficient and needs to be modified In 1992 the management of the House of Detention presented a new training programme. This training programme will form part of the recently initiated reorganization process to be implemented in the House of Detention.

94. In recent years social changes have been taking place in the Netherlands Antilles which have influenced the way of thinking of its citizens as to the manner in which police tasks are carried out. Specific reference is made to the manner in which police duties are carried out, which, besides a more pragmatic than formal maintenance of the law, is geared to helpfulness to and a relationship of confidence with the public. In this connection the police force management developed a policy regarding the interpretation of the police task by the force and its officers throughout the 1990s. The aforementioned led to a petition for a consultancy specialized in organization and training development and the integration of programmes with regard to conduct training during both initial and advanced training of the Netherlands Antilles Police Force. On the basis of the aforementioned the consultancy introduced a project plan (PROFIPOL).

95. In this plan special attention is given to the training, professional as well as non-vocational, of police officers, to provide them with the knowledge and teach them the attitudes and skills through ongoing activities to enable them to work as good police officers should. A mental attitude aimed at dispelling unrest and feelings of being unprotected, and at approachability, and "customer"-friendliness, preparedness and responsiveness in rendering services and respect for civil equality in the right to protection, are established as points which should be given priority. Owing to the lack of funds for implementing this project, the Minister of Justice opted for execution in various phases.

96. The Federal Decree containing general measures, dated 23 December 1977 (Publication Sheet 1977, 353) governs the selection and training of the judicial officers. A selection committee consisting of, among others, the President of the Judicial Faculty of the University of the Netherlands Antilles, selects eligible candidates and subsequently submits a recommendation to the Minister of Justice. The party recommended by the selection committee can be admitted to the basic training for judicial officers. The trainee will be admitted for a two-year work period to the Secretariat of the Court of Justice. In the case of a favourable evaluation of his or her activities during a specific period, the party concerned will then be admitted to the Public Prosecution Office for a further two-year work period. He or she will subsequently go to the Netherlands for a one-year training period, employed at the secretariat of a court and at the Public Prosecution Office. Throughout the sojourn in the Netherlands the judicial officer will take a number of courses at the "Stichting Studiecentrum Rechtspleging" (SSR) (Foundation pertaining to the Study Centre for the

Dispensation of Justice). The foundation in question provides training for members of the judiciary and for judicial officers during the period of in-training.

97. On returning to the Netherlands Antilles, the judicial officer, in accordance with his or her preference, can be employed either at the Court of Justice or the Public Prosecution Office. After a one-year period at the most, and in the event of a favourable evaluation, the appointment to judge or public prosecutor will be effected.

Article 11

98. Interrogation of suspects and others is regulated in the Code of Criminal Procedure. An interrogation shall be carried out as soon as possible to prevent anyone indicated as a suspect from being exposed to unnecessary suspicion or inconvenience. General instructions on how to perform interrogations are given to the police in the Code of Criminal Procedure. Promises, false information, threats or force must not be used.

99. Another very important aspect is the supervision of the way the police force operates. Besides an internal inspection within the police organization itself, the prosecuting authority is also responsible for inspection of the functioning of the police. The said supervision takes place by means, for example, of assessment in a report by the Public Prosecutor and of monitoring the complaints regarding police brutality. In this respect, what has been stated in the section on article 2 in the present report should be taken into account.

100. Under article 3 of the Organization of the Judiciary (Publication Bulletin 1989, No. 170) the Prosecuting Authority is responsible for law enforcement. This provision is given a fairly broad interpretation and is construed as enforcement of both law and the legal order.

101. Also worth mentioning is the fact that, in anticipation of a total revision of the Rules on the Use of Weapons now in force for crime detection officers, the possibility of using weapons was already limited by Official Order of 6 March 1989, at the insistence of the Prosecuting Authority. Under that Official Order crime detection officers were given additional instructions to use a firearm only in cases of extreme necessity against persons whose identity is unknown and who are suspected of a serious crime and are trying to avoid arrest. All police officers have been provided with a copy of this order and have had to sign for its receipt.

102. As a result of a recent criminal case against a member of the police force who was sentenced for illegal arms use, the Public Prosecution Office organized information sessions for the entire police force with a view to explaining and interpreting the instructions on the use of force (see annex III).

103. There is a Supervisory Board for the Prison and Houses of Detention; that Board has at least three and no more than seven members. Its duties are:

(a) The exercise of supervision over all matters concerning the institution, particularly the treatment of prisoners and the observance of the rules and regulations;

(b) To submit recommendations to the Minister, ex-officio or on request, on matters concerning the institution;

(c) To inform the prison director of its opinion and offer him suggestions.

An independent judge is chairperson of that Supervisory Board. The Board and its members have access at any time to all places where prisoners are kept and they need no specific consent from the prison director for their entry. Through personal contact with the prisoners the Board keeps itself informed on a regular basis of the prisoners' wishes and feelings. The prison is inspected once a month and this is usually done unannounced.

104. The supervisory task of the Committee has become most extensive in recent years. Its functioning must be optimized.

105. Apart from the Supervisory Committee, there is also supervision by the Public Prosecution Office, as specified in the section on article 2 (p. 21).

106. Mention is also made of "supervision" in the event detainees approach the judge, as in the Rietwijk Case (1991), in which various detainees demanded a handling of their case in conformity with the legal stipulations of the Convention.

Article 12

107. Pursuant to the Code of Criminal Procedure of the Netherlands Antilles a preliminary investigation shall be initiated as soon as there are causes to believe that an offence has been committed. The preliminary investigation can be initiated by the police or the Public Prosecutor (arts. 32 and 34 of the Code of Criminal Procedure). According to the Code the Public Prosecutor has responsibility for all criminal investigation. Under Netherlands Antillean law the Public Prosecution Office has the exclusive right to institute criminal proceedings. It also decides whether in specific cases proceedings should be initiated or pursued.

108. In cases where criminal investigations require that certain investigation procedures be carried out, such as the summoning of witnesses for examination, the carrying out of house searches or the application of other coercive measures, a preliminary judicial examination will be initiated by the examining magistrate on the instructions of the Public Prosecutor. The examining magistrate is a member of the judiciary and is independent and impartial. The judge's duty is to prepare the case for the hearing before the court. He does not himself take part in that hearing. A preliminary judicial examination can be opened before the identity of the suspect is known.

109. The requirement contained in article 12 of the Convention, that a "prompt investigation" be carried out, is guaranteed by the obligation deriving from article 6, paragraph 1 of the European Convention on Human Rights, which states that "in the determination ... of any criminal charge against him, everyone is entitled to a ... public hearing within a reasonable time ...". Under Netherlands Antillean law this obligation is directly applicable.

Article 13

The police

110. In 1985 the Government of the Netherlands Antilles assigned a special committee for the investigation of cases brought against police officers.

111. This committee was not able to operate at optimal level due to lack of investigative authority. They also had a limited mandate, as a result of which its activities in practice amounted to a type of supervision over the internal handling of complaints of the police organization. Because of this it became impossible to implement the right to file complaints by means of administrative procedures.

112. With regard to the administrative procedures for filing complaints, a substantial improvement has been achieved. Recently the Federal Decree governing the Complaints Committee as to the Conduct of Police (Publication Sheet 1994, no. 5) became effective and the Committee was granted authorization to carry out investigation activities independently (appendix I).

113. Under the Code of Criminal Procedure, the right to complain consists of the right to filing of complaints in accordance with article 12 of the Code and the right to file a complaint with the corresponding judicial authorities, in accordance with article 26 of the Code, in the event that no legal prosecution takes place.

114. Access to criminal procedure as well as the right to file complaints for victims of unnecessary police brutality could be improved. At present there is an undesirable situation whereby colleagues in the police force are in charge of the criminal investigation. The bill for the institution of the National Criminal Investigation Department, which will fall directly under the jurisdiction of the Attorney-General, will offer a greater guarantee of an independent and objective investigation in the event of the filing of a complaint.

The House of Detention

115. Procedure concerning the right to file complaints for victims of inadmissible use of force in the House of Detention can be improved. The detainee in question informs the coordinating Public Prosecutor with regard to his complaint and his/her wish to make a declaration to this effect by means of uncensored correspondence. The Public Prosecution Office aims at having the declaration of the detainee conveyed verbally to a member of the police force as soon as possible. Owing to pressure of work there can be some delay before the actual declaration is made. To guarantee an independent and rapid handling of such cases a national criminal investigation department must be established, which will fall directly under the jurisdiction of the Attorney-General.

116. At present there are no administrative procedures in connection with the right to file a complaint, because a complaints committee is entirely lacking in the House of Detention/Prison. As a means of modernizing this right of detainees, in 1988, the setting up of a complaints committee for the House of Detention/Prison was proposed in the Bill for the Establishment of the

Principles of the Prison System in the Netherlands Antilles. This bill has been forwarded to Parliament. Upon its adoption the right to file a complaint can be exercised by means of an administrative procedure.

117. In principle, all complaints concerning the application of inadmissible force by the police or the prison guards are investigated further. The Public Prosecution Office, in principle, orders the police to conduct an investigation in all relevant cases. The investigation team often consists of hand-picked members of the police force. In so far as the complaint results in a criminal case against a prison guard, or police officer, the issue is further dealt with at criminal procedure level. In the event the severity of the case permits, the complaint concerning the application of inadmissible force can be closed with disciplinary punishment being imposed. One of the reasons not to investigate a complaint any further, is if the relevant report clearly indicates that a suspect resisted arrest, leading to the application of force.

118. The criteria that the Public Prosecution Office maintains for not initiating legal pursuit following the filing of a complaint, can be the following. If there is a justified reason, such as separating two detainees who are fighting with each other. Also in the case of suspects who were caught in the act and subsequently fled, generally speaking no legal pursuit will be initiated in the event of application of force. Cases in which delinquents act in a most violent manner, such as the recent case of armed bank robberies, are not eligible for legal pursuit on the grounds of the application of inadmissible force by the police. The majority of the cases regarding alleged inadmissible application of force on the part of the police or prison guards are dismissed due to insufficient proof. A proposal to optimize the compilation of proof in these cases involves the setting up of a national criminal investigation department, which will fall directly under the jurisdiction of the Attorney-General and will not form a part of the Netherlands Antilles Police Force (KPNA). In the event no legal pursuit is initiated on the part of the Public Prosecution Office after a complaint has been filed, the torture victim has the right to file a complaint with the court of first instance in accordance with article 26 of the Code of Criminal Procedure.

Article 14

119. Netherlands Antillean law provides several means by which victims of crimes of violence may obtain compensation. Both the Civil Code (art. 1382-1397 d, for damages caused to others) and the Code of Criminal Procedure (arts. 189-193, for damages caused by the offender) of the Netherlands Antilles contain provisions with regard to compensation and damages that ensure that the victim of an act of torture obtains redress.

120. Firstly, a victim may join in criminal proceedings as an injured party and make an application for damages.

121. Secondly, victims seeking compensation on account of any tort may have recourse to the civil courts. If the tort is alleged to have been committed by the State or by a public official in the exercise of his office, the State may be compelled to pay damages.

122. In the event of death of the victim of an act of torture damages can be claimed directly from the Government of the Netherlands Antilles or from an Island Government if that act has been committed by a government official.

123. There is no right to medical or psychological compensation, solely financial compensation. The aforementioned stipulations also concern aliens.

Article 15

124. The Code of Criminal Procedure of the Netherlands Antilles contains (arts. 301-307) rules for the judgment of evidence.

125. Under Netherlands Antillean criminal procedure, not all types of evidence are admissible, since the law exhaustively lists those which are (the judge's own observations, statements made by the suspect, witnesses and experts, and written evidence), while it excludes statements made by fellow suspects and declares uncorroborated statements made by the suspect or a single witness to be insufficient. In Netherlands Antillean criminal case law the doctrine of unlawfully obtained evidence, obtained by a breach of statutory provisions or in a way which conflicts with unwritten procedural law, has been developed. Such evidence may not be used to prove a charge. It is the general opinion both in legal practice and doctrine that the court shall not use or give any weight to evidence illegally obtained. Failure to observe the above regulations leads to the evidence thus acquired being declared inadmissible.

126. Witnesses are in principle obliged to make a statement unless they can invoke a statutory exemption. The obligation is compelling: witnesses at a hearing under oath and, at the request of the suspect or upon application by the Public Prosecution Office, the courts have the power to remand in custody witnesses who without legitimate grounds refuse to answer the questions put to them or to take the oath (or, in the case of non-believers, make the affirmation), provided this is urgently necessary in the interests of the inquiry.

127. The court may order an immediate criminal investigation if a witness is suspected of having committed perjury. In no instance is it permissible to subject witnesses to any coercive measures other than those described above.

Article 16

128. The Netherlands Antilles will choose to formulate a separate definition of the offence of torture. Other forms of cruel, inhuman or degrading treatment or punishment may be deemed to fall within the definitions of existing offences in the Criminal Code. These include articles 248 and 249 (concerning sexual abuse); articles 287 to 299 (concerning crimes against a person's liberty, slavery, kidnapping, assault and battery and unlawful threat, the infliction of bodily injury or causing death).

129. The statements made above with respect to articles 10, 11, 12 and 13 are also applicable to the acts referred to in article 16 of the Convention.

III. THE CASES REPORTED TO AMNESTY INTERNATIONAL

130. In 1992 Amnesty International approached the Netherlands Antillean Government in connection with four cases of police brutality which took place in 1990 and 1991. Amnesty International was provided with all the required information and an effort was made to shed light on these cases. With regard to the complaints of Amnesty International the Government of the Netherlands Antilles has reported the following.

1. The Henry Kenneth Every case

131. The facts: In the evening hours on 21 June 1990, police assistance was solicited for a mad man who was creating a great disturbance on the public highway in one of the residential areas. A police patrol appeared on the scene and upon request received reinforcement. The gentleman was not in his right senses and had to be forcefully subdued. In a police patrol car the gentleman was then taken to the polyclinic of the St. Elisabeth Hospital, where he was declared dead upon arrival.

132. The investigation: Upon the orders of the Public Prosecution Office Mr. Every's body was immediately seized and instructions were given to perform an autopsy. At the same time the corresponding police authorities were instructed to conduct an investigation into the occurrences. Shortly after this the relatives, father, mother, and a sister of the deceased, were received by the Attorney-General. He informed them of the instructions given and also enlightened them on the investigation procedure, and advised them to contact the Chief-Prosecutor at any time, since matters were under his personal supervision. They were also advised to inform the same prosecutor of the names of bystanders (witnesses), so that they too could be heard.

133. During an extensive conversation after the family had indeed established contact with the Chief-Prosecutor, the names of 11 possible witnesses were given. In the meantime the official police report had been submitted to the Public Prosecution Office. At that point the Public Prosecutor immediately requested the examining magistrate to initiate an investigation into (one) (still) (unknown) perpetrator(s). In our legal system such an investigation is conducted solely by the examining magistrate, independent of all other instances.

134. In the framework of this investigation the examining magistrate questioned all 11 witnesses mentioned by the family. In addition, four police officers who had been present at the time were also questioned. As a result of this investigation no criminal evidence could be formulated against any of the police officers, because the vast differences in their accounts of facts rendered by the witnesses. The statements given by both the witnesses for the prosecution and the witnesses for the defence were too dissimilar to allow any criminal evidence to be derived. Moreover, the autopsy report mentioned a few external bruises (haemorrhages) on the hands and wrists, which corresponds with the account given by a police officer who stated he had hit Mr. Every on those particular areas a couple of times with a baton, in order to break down his refractoriness. There were also haemorrhages in the cranium (the back part) which could very well correspond with accounts rendered by witnesses who

stated that Mr. Every purposely threw himself onto the road surface a couple of times, thus hitting the back of his head on the road surface and the pavement.

135. As the direct cause of death the pathologist noted: serious lesions to the heart, haemorrhage zone and ruptures in the right auricle of the heart, which in this case could possibly have led to arrythmia, along with serious lung haemorrhages. This direct cause cannot be considered as a consequence triggered off by the acts of the police officers. A toxicological report indicated that the urine of Mr. Every contained cocaine-metabolite (Benzoyl-ecgnonine) and the cannabinoid (9THC-COOH).

136. From the results of the investigation conducted there was no possible manner of formulating criminal evidence against any of the police officers.

137. When the results were obtained the relatives were once again invited to an interview with the Public Prosecutor. During this conversation the Public Prosecutor discussed at length the results of the investigations and allowed perusal of the official police reports and of copies of both the autopsy report and the toxicological investigation.

138. The Public Prosecution Office immediately instructed that a totally objective investigation be conducted by the examining magistrate, informed the family of the procedure once again, and conveyed all the minute details of the results of this investigation to the aforementioned relatives.

139. The conclusions of the pathologist's report were the following:

> "Young man with clinical history of several previous nervous crises. Before his death he was in a nervous crisis and was transported by the police to the hospital, and was dead on arrival. The autopsy showed several trauma lesions (see external examination) including recent epicranial and sub-arachnoidal haemorrhage in the parieto-occipital region, which in my opinion was not sufficient to explain his death. The heart showed also recent haemorrhage area of 2 x 1 cm in proximity with the vena cava; 1 cm below this haemorrhage were two small lacerations of 1 cm each in the right atrium.
>
> "I think that the blunt injury to the heart, haemorrhage area and lacerations (2) in the right atrium which possibly caused arrhythmia, were the cause of death in this case, associated also with severe pulmonary haemorrhage. No external lesions were seen in the thoracic wall, but a rapid increase in intracardiac pressure may be caused by the sudden displacement of blood into the thorax from abdomen and lower limbs. This may occur in falls from heights or traffic accidents; blows on the chest with a heavy object can also damage the heart."

140. Amnesty International's reaction to the report of the Public Prosecution Office was as follows:

> "In the first case, that of Henry Every, the report of the Public Prosecution Office indicated that he had been arrested on the evening of 21 June 1990 by the police in circumstances where they had to subdue him

and that he reportedly threw himself on the road several times. The report stated that the cause of death was serious lesions to the heart and the autopsy report confirmed this. Your report also stated that 'this direct cause cannot be considered as a consequence triggered off by the acts of the police officers'. Professor Pounder, a forensic pathologist, commented, inter alia, that this first conclusion in the report is very questionable.

"In this report to us, he stated that in his opinion Henry K. Every was killed by some form of crushing injury to the chest. In his view, the mechanism for inflicting this injury was achieved by a person dropping their body weight upon the chest of an individual lying upon the ground. This might have been by stomping, drop-kneeing or forceful sitting.

"According to the report, Henry K. Every was in the custody of the police throughout the relevant period before his death and, therefore, this type of injury could only have been inflicted by the officers who had him in custody. In the view of Amnesty International the responsibility for this injury and subsequent death lies with the officers who were present and we therefore cannot agree with the conclusion in the report that 'from the results of the investigation conducted there was no possible manner of formulating criminal evidence against one of the police officers'.

"After examining the police and autopsy reports, Professor Pounder suggested that the pathologist in Curaçao should be specifically asked to examine statements on the circumstances of death and then to suggest the mechanism of causation of the fatal injury in order to obtain the necessary causal link for the authorities to conduct a full investigation into his death."

141. The Pathologist in Curaçao provided a second opinion and reaction to the report of Professor Pounder and Amnesty International:

"Following perusal of the autopsy report, she agrees with Professor Pounder that powerful thumping and pressing force on the chest, through bruising of the heart, must have led to the cause of death in the case of Henry Kenneth Every. The lack of external visible lesion of the skin or bones of the chest wall, by no means excludes, in the case of diagnosed internal lesions, the effect of thumping force applied to the chest. Also with reference to the mechanism which must have led to this type of lesion, she agrees with Professor Pounder.

"The pathologist received photocopies of the following procès-verbal and reports regarding the circumstances surrounding the death of Henry Kenneth Every:

Procès-verbal No. 1125/1990;

Report of the Netherlands Antilles Police Force drawn up by U.J.L. Isidora, R.C. Bloeiman, R.A. Denisia, and H.A. Rosinda;

Procès-verbal containing statements rendered by witnesses before the examining magistrate, dated 13 September 1990 the witnesses being: E.P. Martina, R.E. Goilo, M.T. Thomasa, and H.S. Every, and statements dated 20 September 1990, by: G.R.C. Chatlein, M.F. Maria, M.G. Martiena, and E.F. Martina.

"Upon perusal of the aforementioned, the following obscurities were depicted, which render the indication of the causal mechanism for the origin of the deadly lesion extremely difficult in this case:

I did not receive any summary or indication from the Public Prosecution Office regarding what were considered as the most probable facts as to the arrest and death of Henry Kenneth Every.

In the declarations made by witnesses, the alleged blows brought about by the police officers vary from solely kicks against the groin and blows with the baton on the fingers to 'bashing in' on H.K. Every's entire body. From the declarations it cannot be concluded as a matter of course that pressing force was used on the chest, even though various declarations contain statements on this point which require more specific explanation. It could, however, be too far-fetched and misleading to adduce the statements rendered according to one own's personal judgement as possible indications for an explanation of the manner in which H.K. Every had received the fatal lesion.

Virtually all declarations made to this regard mention H.K. Every's fierce opposition against his arrest, during which he was allegedly kept in check in order to finally get handcuffed. No mention was made of the position he was in while being kept in check nor which methods or manoeuvres were applied to keep him in check.

"In the report and the procès-verbal of the police, mention is also made of the fact that H.K. Every manifested fierce opposition during the ride to the polyclinic, during which his legs ultimately had to be handcuffed. Once again it is not clear whether H.K. Every was sitting on a bench or whether he was on the floor of the jeep and in what position. It is not clear either in which position he was kept in check in the jeep. This information is essential in order to determine whether there was an impact of pressing force on the chest.

"Finally, she argues that on the basis of the documents submitted to her for perusal, it is not possible to establish, in an unambiguous manner, the casual link between the fatal lesions of the heart manifested at H.K. Every's autopsy and the manner in which these were brought about. In order to be able to answer Professor Pounder's questions satisfactorily, more clarity with regard to the aforementioned is required. It is to her utmost regret that the pathologist who effected the autopsy was not called in since September of 1990 to give her point of view to this effect or to indicate which pieces of information would be required for enlightenment as to the manner in which the fatal lesion could have been brought about."

2. The Leroy Neil case

142. The facts: On 9 February 1991 Leroy Neil, who was born in Jamaica, on 27 November 1956 was interrogated by the investigators of the Narcotics Department. He had been arrested on 8 February (10.30 a.m.) and he was detained at the House of Detention in Curaçao. During the interrogation effected by the aforementioned investigators, the suspect slumped forward against the interrogation table and subsequently lay down on the floor. The doctor who was called on could only certify his death.

143. The investigation: Immediately after the doctor's testifying to Mr. Neil's death, the Public Prosecutor was notified. The latter promptly had the body seized and transported to the hospital. The pathologist was requested to perform an autopsy and the Consul-General of Jamaica was notified. The Public Prosecutor, through the Commissioner-of-Police, requested that an investigation be conducted, during which both prison personnel and the doctor and the investigators who had carried out the interrogation were questioned. From the investigation it was concluded that the day prior to his death Mr. Neil complained at the prison about stomach pains. The doctor gave him medication (Novaminsulfonum) for this complaint. On Saturday, 9 February 1991, Mr. Neil was groaning audibly when taken from the prison to the department where he would be interrogated. The investigators in charge of transporting him notified their Narcotics Department counterparts of this. Prior to the investigation Mr. Neil was made to wait in a waiting-cell. After checking the cell, it was established that Mr. Neil had vomited. He was explicitly asked whether he felt well enough to be submitted to an interrogation. Despite his affirmative answer, the interrogators heard other detainees in order to give Leroy Neil a chance to get his strength back after vomiting. Not once did he groan with pain after the interrogation started. After half an hour he asked to go to the rest room, which he was immediately allowed to do. The investigators did notice, however, that he was staggering when he returned. After an additional two or three minutes of interrogation he stated that he felt dizzy, he slumped forward on the interrogation table and then chose to lie down on the floor. He no longer reacted to the calls of the investigators. The Chief of Staff immediately notified the doctor. The doctor, who is employed by the Government and is also the official medical attendant of the prisoners, as well as detainees, confirmed his death. Upon the request of the Consul-General of Jamaica the autopsy was not performed until a Jamaican attorney could be present: the postmortem was performed in the presence of Mrs. Donna R.C. McIntosh-Brice, attorney-at-law, from Kingston, Jamaica.

144. According to the autopsy report there were symptoms of peritonitis and a purulent area between the lower abdomen, the liver, and the diaphragm. Seven hundred millilitres of purulent fluid were found in the abdominal cavity. The peritonitis led to shock, which eventually resulted in death. Furthermore, in the last moments of his life there were signs of Mr. Neil choking on his own vomit. The external examination showed a narrow contusion of 4 cm in length in the sternum. Apart from that particular contusion there were no other indications of physical abuse. According to the pathologist the aforementioned contusion is consistent with the information regarding Mr. Neil's slumping forward against the interrogation table. The Jamaican attorney was briefed there and then by the pathologist. Via the

Consul-General of Jamaica a copy of the autopsy report was also submitted to the Jamaican authorities and the relatives of the deceased. From their part, there were never any questions about or criticism levelled at the manner in which the investigation was conducted and the autopsy performed.

145. Conclusion: Taking into consideration the advanced stage of the peritonitis it can be concluded that it was not acute. It probably had been dormant for a while. The doctor heard the complaints and prescribed medication. There was absolutely no physical abuse on the part of the police. The deceased never showed any form of aggression. On the contrary, he was probably very subdued as a result of the pain he was experiencing. To the police it was evident that they were dealing with a detainee who was not feeling well. The police did not exert any form of violence.

146. Amnesty International's reaction to the report of the Public Prosecution Office was as follows:

> "The second case raised by Amnesty International with the Netherlands Antillean Government was that of Leroy Neil who died on 9 February 1991 of peritonitis while under interrogation by the Narcotics Department in Curaçao. It was reported to Amnesty International that prior to his death Leroy Neil had claimed to fellow prisoners that prison officers had forced a truncheon into his anus and that they had heard him screaming.
>
> "Professor Pounder confirmed the opinion in the autopsy report that the cause of death was peritonitis. In his view this raised two questions: firstly, the degree of care given to a man suffering from peritonitis and secondly, the causation of the peritonitis.
>
> "His opinion on the first was that 'it is important to bear in mind that a person suffering from peritonitis will inevitably be severely ill, in pain, incapable of walking upright with a normal posture, vomiting and otherwise in a physical state such that it would be clear to any lay observer that the person was seriously ill. To interrogate an individual in such a state displays at the least a lack of basic human compassion'. Your report confirmed that some of these symptoms were present in the case of Leroy Neil.
>
> "In the opinion of Amnesty International, the action of the police and the related medical and prison staff can be considered to constitute cruel and inhuman treatment to an extreme extent and to breach all existing national and international standards on the treatment of detainees, in particular regarding the provision for medical care.
>
> "The pathologist who prepared the autopsy report apparently regarded the cause of the peritonitis as unexplained, but had excluded the presence of natural disease of the stomach, small bowel, large bowel and appendix which might have produced such a peritonitis. In the opinion of Professor Pounder, 'the causation of the peritonitis is in my view the more important aspect of the case given the allegation of the assault by forcing a truncheon up the anus. It is well recognized that the introduction of such foreign objects into the anus and rectum may cause a peritonitis. The mechanism is a stretching damage of the tissues and

there need not necessarily be any major visible injury. Unfortunately the autopsy report in this case does not include a description of the anus and rectum and it is likely that these were not examined. It would not be unusual in a routine autopsy not to examine the anus and rectum, but given the circumstances of the case this is a regrettable omission'.

"He concluded that a 'peritonitis of this type is a recognized complication of the insertion of a foreign object into the anus and in this instance can be regarded as providing corroboration for the allegation'. He suggested that 'the pathologist be given the information about the specifics of the allegation and then asked to give an opinion on her autopsy findings in the light of this new information'. An inquiry of this nature would be directly relevant to establishing the charge of ill-treatment."

147. The reaction of the pathologist in Curaçao to the report of Professor Pounder and Amnesty International was the following:

"Following perusal of the report of Dr. Pounder the pathologist informs that the whole body is routinely inspected in any forensic autopsy, including genital and anal regions. The rectum is routinely examined together with the other parts of the large bowel. The anal canal is not routinely examined, but will be in any future case, regardless of any allegations. The pathologist does not usually describe all parts of the small and large bowel separately in the absence of lesions, unless she explicitly wants to emphasize that no lesions were found in a specific part of the bowel. In the case of Leroy Neil she was not aware of the allegation that a foreign object might have been inserted into his anus and rectum. She had been informed that Neil was allegedly beaten to death while in custody. His whole body including external genitalia, perineum and anal region were inspected for signs of injury. No visible signs of injury were found. Since no specific questions were asked she confined herself to stating that there were no signs of injury compatible with the exertion of external violence on the body of Neil. The stomach, small and large bowel, including the rectum were definitely examined in search of common causes of peritonitis and of traumatic lesions. There were no visible lesions to the rectum or other parts of the bowel. The finding of this type of peritonitis in an adult without any clear anatomic cause or known predisposing illness is indeed rare. Although the possibility of infectious disease of the bowel (e.g. salmonella) could not be proven in this case, it was hypothetically considered as an uncommon possible cause, because of the history of apparent diarrhoea and vomiting.

"It is well recognized that introduction of foreign objects into anus and rectum may cause peritonitis, to her knowledge, through puncture, perforation or other obvious damage of the rectal wall. She is not familiar with the mechanism of a stretching damage of tissues without any visible injuries leading to such rapidly ensuing and fatal peritonitis. She has consulted other pathologists in the Netherlands including pathologists of the Forensic Pathology Department in Rijswijk, the Netherlands, but none of them were familiar with the mechanism. She has not been able to find literature on this particular matter.

"According to Professor Pounder there need not be any major visible injury in the case of stretching damage to the tissues. In the case of Leroy Neil this would imply that in spite of the apparent absence of any visible injury, the possibility of a foreign object having been inserted in the anus and rectum of the deceased cannot be excluded with certainty on the basis of the autopsy findings alone. Consequently, inquiry into the events after detention of Leroy Neil remains necessary to exclude such beastly abuse. On the other hand, with proper restriction, she cannot at this moment sustain the suggestion of Professor Bounder that the finding of this type of peritonitis 'can be regarded as providing corroboration for the allegation' without comment. Given the negative autopsy findings, in her view any possibility remains hypothetical.

"In the letter from Amnesty International Professor Pounder is cited. Since this case remains very puzzling and unsatisfactory, she would like to know if Professor Pounder considered any other possibilities. If at all possible, she would very much appreciate receiving the complete text of his comments on the autopsy report of Leroy Neil. She would be indebted to him for receiving the sources of publications regarding the mechanism of stretching damage to the ano-rectal wall.

"Furthermore, she takes the liberty of commenting on the fact that although there might not have been any clear symptom or sign of peritonitis on medical examination of Leroy Neil, there were at least evident signs of illness (vomiting, diarrhoea) as appears from the information given to me, requiring, at the least, proper care.

"As to the reports the pathologist received regarding the events after detention of Leroy Neil she observed that a detailed record of the complaints and course of illness of Leroy Neil were lacking, making it very difficult to get any proper insight into the course events. She should like to suggest that a detailed record be kept in any case of complaints or illness of detainees."

148. The conclusion of the autopsy report was as follows:

"During the autopsy performed on the remains of Leroy Neil, 34 years of age, a general purulent inflammation of the peritoneum was established. No clear-cut anatomical cause could be found for the said purulent inflammation of the peritoneum. The seriousness of the aforementioned symptoms can explain the cause of death. Apart from a small contusion of the skin, brought about when the deceased fell forward according to information provided, there were no signs of physical abuse or external violence. During the post-mortem examination cannabincide 9 THC - COOH was found in the urine."

3. <u>The Moreno G. Fabias case</u>

149. The facts: On 22 May 1991, during the arrest of two persons, including Mr. Fabias, carried out by a police patrol consisting of three police officers, a baton was used on Mr. Fabias by one of the officers. Mr. Fabias filed a complaint of police abuse.

150. The investigation was conducted by a police officer belonging to a completely different department than the one where the said patrol members are employed. Upon request of the Public Prosecutor the staff of the Commissioner were also drawn into the investigation. The doctor whom Mr. Fabias approached with the announcement that he had been physically abused by the police concluded that there were welts on the right shoulder, oval-shaped bruises on the left upper and lower arm, haemorrhages down the middle of his back and on the lower back, severe haemorrhages on the buttocks, and a contusion of the right big toe. Mr. Fabias stated that he and his friend Ottmar Matheu had been detained by a police patrol and that while he was being frisked, he was kicked in the legs to spread them, and was subsequently hit with a baton all over his body.

151. Ottmar Matheu stated that he saw a police officer hit his friend Mr. Fabias without any reason while he was in a standing position, with a baton and with his fists. Afterwards Ottmar Matheu withdrew his statement, saying that he had only wanted to do his friend a favour. Of the other two police officers, one stated that he had not seen abuse take place because he was busy with Ottmar Matheu. The other stated that whilst being frisked Mr. Fabias took up a boxing position which prompted his colleague to hit Mr. Fabias twice with a baton. After the official police report was submitted the Public Prosecutor dismissed the case due to lack of evidence.

152. Conclusion: This was certainly a case in which violence on the part of the police was applied. Even though there are justified doubts as to the legitimacy of his actions, between the two arrested persons there was no uniform opinion as to the manner in which said violence had taken place, had Mr. Fabias not been immediately attended by a doctor reasons for which the Public Prosecutor was of the opinion that it was not necessary to continue legal pursuit of the police officer in question for the alleged violence.

153. Amnesty International's reaction to the report of the Public Prosecution Office was the following:

> "The third case sent to your Government was that of Moreno G. Fabias who was arrested on 22 May 1991 by a three-man police patrol. The report provided by the Government of the Netherlands Antilles stated that a doctor who examined Moreno G. Fabias after his arrest noted injuries to his right shoulder, left arm, back, buttocks and right big toe.
>
> "Professor Pounder considered that the most significant aspect of the injuries is the pattern, with the inference that the blows were struck from behind. The police report is unclear about whether the police explanation is that Moreno G. Fabias was struck by an officer who was face-to-face with him, or whether a second police officer struck him from behind when he was confronting the first officer. However, the important conclusion is that the number of injuries sustained by the complainant is not consistent with the claim in the police report that Moreno G. Fabias was only struck twice with a baton.
>
> "Under these circumstances Amnesty International would expect the Public Prosecutor to have proceeded with the inquiry and, if justified, the prosecution of the police officer or officers involved. Amnesty

International cannot agree with the conclusion of the Public Prosecutor that there was sufficient reason to drop the case because 'there was no uniform opinion as to the manner in which said violence had taken place' and that Moreno G. Fabias had been immediately attended by a doctor."

4. The Xavier Fluonia case

154. From the investigation conducted by private investigators, as well as the autopsy carried out by the pathologist it has become evident that the suspect hanged himself with a long shoelace in his cell. The cause of death is thus: death by suffocation as a result of hanging. Previously, after his detention, some shoelaces were taken from the suspect. How he acquired or how he remained in possession of the shoelace utilized, can no longer be traced. Apart from a cut at the back of the head, caused presumably when the already lifeless body fell to the ground when the cell door was opened, no other indications of violence were encountered by the pathologist. It can only be assumed that the complaining relatives, who saw the body after the abduction considered the traces of the autopsy performed by the pathologist as traces of violence brought about by the police.

155. Conclusion: In the case of Jeroen Xavier Fluonia, 20 years of age, there were traces of external, mechanical pressure and girding force (hanging). The cause of death can be explained by this effect of force. There was no other cause of death.

156. Amnesty International reacted to the report of the Public Prosecution Office as follows:

"We understand that an investigation was opened into the death in police custody of Jeroen Xavier Fluonia on 26 July 1992. We understand that the police and an official from the Prosecutor's Office informed his family that Jeroen Fluonia committed suicide by hanging in cell No. 6 of the police station at Wilhelminaplein, Curaçao, where he had been held since 23 July 1992. His mother and girlfriend inspected the cell in which he allegedly died. They remarked that cell no. 6 was small, extremely dirty, with an open hole in the corner to use as a toilet, and covered in cockroaches. The only furniture they saw in the cell was a bed consisting of a broken concrete shelf with no mattress, pillows or sheets for the prisoner to lie on.

"The reports of the death which have been received by Amnesty International raise a number of questions which we believe the investigation should address.

"In the first place, police officers who provided information to the family were reportedly unable to agree as to what Jeroen Fluonia used to hang himself. The family were apparently told in the station at Rio Canario, Curaçao, that he used the laces of his trainers. In Garipitoweg, Curaçao, they were told he used the cord from the hood of his anorak and in Wilhelminaplein they were told he used his belt.

"Secondly, sometime after his death, his body was handed to a pathologist who carried out an autopsy. According to the report of a witness who saw

the corpse, Jeroen Fluonia showed signs of injuries which, if correct, Amnesty International would consider as constituting prima facie indication that the prisoner had been ill-treated. His right wrist and hand were badly swollen, his lips were split and had been sutured, he had lost at least one tooth, the right-hand side of his forehead was badly grazed, there was a substantial swelling to the back of his head with a deep cut, bleeding and further swelling and bruising on the left-hand side of his face and behind his ear. The witness could see no marks of a ligature on his neck although one would expect to find such marks on the corpse of a man who had committed suicide by hanging.

"We would urge you to ensure that a prompt, thorough and impartial examination of the available evidence is carried out, including information provided by Jeroen Fluonia's mother and girlfriend, and to examine their allegations that there were signs of ill-treatment visible on the corpse. We would appreciate your cooperation in informing Amnesty International of the pathologist's estimate of when the alleged facial injuries were incurred."

157. The autopsy report is summarized below.

158. At the autopsy performed on the remains of Jeroen Xavier Fluonia, 20 years of age, the following became evident:

(a) There were two narrow, circular traces of cord around the throat. Both traces of cord crossed one another on the throat under the thyroid cartilage. One of the traces of cord went right around the throat/neck region. The other trace of cord was inclined upward towards a corner towards the back part of the head. In the soft parts of the throat there were contusions brought about by cord, traces of subcutaneous skin tissue, muscular tissue and thyroid.

(b) The blood flow to the face was slightly arrested. The tongue was clenched between the teeth and was bulging out of the mouth. In the white of the eye and the conjunctiva of the eyelids there were several little haemorrhaged points. The heart also manifested diverse little haemorrhaged points. The heart and blood vessels contained a lot of liquid blood.

(c) The skin of the back of the head manifested an irregular hooklike chopwound 5 cm in length with some bleeding in subcutaneous adipose tissue.

(d) There were no sickly abnormalities to be indicated, which could be of importance for the cause of death.

159. According to the aforementioned findings specified under (a), there was external mechanical pressure, and girded force on the throat, which can be occasioned by hanging. The cord traces were very narrow and appeared as shoelaces, doubly entwined. The findings specified under (b) indicated suffocation as the cause of death. Death by suffocation could have been occasioned by the effect of force on the throat. The chopwound referred to at the back of the head was occasioned, according to the officer in question, when J.X. Fluonia fell to the ground when the cord from which he was hanging

was loosened. This skin lesion was superficial and showed no further internal lesions. There were no further signs of external, mechanical force on the body.

Conclusion of the Government of the Netherlands Antilles with regard to the reported cases

160. With reference to the four cases concerned, the Government of the Netherlands Antilles argues that more research activities should have been effected. There are also shortcomings in these cases as to the carrying out of the established procedures, such as the inaccurate specification of all the police manoeuvres at the time of the respective arrests and the inadequate supervision of the course of illness and complaints on the part of the patient-detainee.

161. We should like to stress that it was not feasible at that time to correct possible omissions in the procedures followed, but that every time corrections were made in organization and procedures, both by the Minister of Justice and by the Public Prosecution Office of the Netherlands Antilles, so as to prevent irregularities in any form.

162. One of the most important measures taken as a result of these cases, in cooperation with the prison doctors and the pathologist of the National Laboratory, is that a protocol is being developed to tackle efficiently and in a responsible manner the necessary investigation in the event of police brutality and/or ill-treatment by prison guards and continually to coordinate the activities of the Public Prosecution Office and the doctors concerned.

163. As a result of the correspondence with Amnesty International contact was established between the pathologist in Curaçao and Professor Pounder. He was requested that relevant literature be remitted that can be utilized as a means of adjusting the local procedures in force.

164. Furthermore, we wish to assure you that the decisions directed towards renovation that have been taken during the last few years are proof of the fact that our efforts to implement all the obligations ensuing from this Convention are incessant. Vide what has been said under articles 2, 10, 11 and 13.

165. It goes without saying that we always appreciate further advice and suggestions on the part of the United Nations and Amnesty International.